

Appl. No.: 10/798,473  
Docket No. 9550  
Amdt. dated March 28, 2011  
Reply to Office Action mailed on March 1, 2011  
Customer No. 27752

## REMARKS

### **Claim Status**

Claims 1-26 are pending in the present application. No additional claims fee is believed to be due.

### **Response to Requirement for Restriction of Inventions**

The Examiner has required, under 35 USC §121, election of a single disclosed invention for prosecution on the merits. Specifically, the Examiner asserts that the inventions are grouped as follows:

- I. Claim 1-7 drawn to a method of treating keratinous tissue, classified in class 424, subclass 401.
- II. Claims 8-19, drawn to a receptacle for warming a topical composition, classified in Claim 424, subclass 400.
- III. Claims 20-25, drawn to a kit for treating keratinous tissues, classified in class 424, subclass 400.
- IV. Claim 26, drawn to a skin care regimen, classified in class 424, subclass 401.

Pursuant to this restriction requirement, Applicant hereby elects to prosecute Group II including Claims 8-9. This election is made with traverse.

The traversal of the indicated restriction requirement is requested as it is considered improperly made. The Office Action does not show the groupings (specifically, Groups II and III) result in a serious search and examination burden on the Office as required by MPEP § 803.I(B). The Office argues that a serious search and examination burden exists “because one or more of the following reasons apply . . . .” The Office then states (a) the inventions require a different field of search, (b) the prior art applicable to one invention would not likely be applicable to another, and (c) the inventions are likely to raise difference non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. The Office’s justification is conclusory. The Office offers no explanation for why the three reasons as presented are applicable to present grouping (or, specifically, to Groups II and III). Groups II and III do not require a different field of search since both are in the same class and subclass. The Office has

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provided no reason why the prior art applicable to one group would not be applicable to the other. The Office's third reason (non prior art issues) is without support in the MPEP.

The Office's justification does not meet the standard established in MPEP § 808.02. Without a sufficient showing as to the search and examination burden, the restriction requirement is improper and should be withdrawn.

### **Response to Requirement for Election of Species**

The Office states that Claim 8 is generic to the species of "manually activating a heating system and heating system that can be activated by switch." The language used by the Office is not reflected in the claims. However, to be fully compliant, Applicant elects a "heating system activated by insertion of said sachet into said cavity" as encompassed in Claim 12. This election is made with traverse.

The Office again recites that same search and examination burden as presented in the restriction requirement. The Office offers no explanation for why the three reasons are applicable to the two species. The Office's justification does not meet the standard established in MPEP § 808.02. Without a sufficient showing as to the search and examination burden, the election of species requirement is improper and should be withdrawn.

### Conclusion

This response represents an earnest effort to place the present application in proper form. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date: March 28, 2011  
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